

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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STAR AUTO SALES OF BAYSIDE, INC. :
(d/b/a STAR TOYOTA OF BAYSIDE), :
STAR AUTO SALES OF QUEENS, LLC :
(d/b/a STAR SUBARU), STAR HYUNDAI LLC :
(d/b/a STAR HYUNDAI), STAR NISSAN, INC. :
(d/b/a STAR NISSAN), METRO CHRYSLER :
PLYMOUTH INC. (d/b/a STAR CHRYSLER :
JEEP DODGE), STAR AUTO SALES OF :
QUEENS COUNTY LLC (d/b/a STAR FIAT) :
and STAR AUTO SALES OF QUEENS :
VILLAGE LLC (d/b/a STAR MITSUBISHI), :

Plaintiffs, :

v. :

VOYNOW, BAYARD, WHYTE :
AND COMPANY, LLP, HUGH WHYTE, :
RANDALL FRANZEN and ROBERT SEIBEL, :

Defendants. :
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Case No.: 1:18-cv-05775

**REPLY TO
COUNTERCLAIMS**

Plaintiffs Star Auto Sales of Bayside, Inc. (d/b/a Star Toyota of Bayside), Star Auto Sales of Queens, LLC (d/b/a Star Subaru), Star Hyundai LLC (d/b/a Star Hyundai), Star Nissan, Inc. (d/b/a Star Nissan), Metro Chrysler Plymouth Inc. (d/b/a Star Chrysler Jeep Dodge), Star Auto Sales of Queens County LLC (d/b/a Star Fiat) and Star Auto Sales of Queens Village LLC (d/b/a Star Mitsubishi), by their attorneys, Trachtenberg Rodes & Friedberg LLP, allege for their Reply to Defendants' Counterclaims (the "Counterclaims") herein as follows:

Answering Allegations

1. Plaintiffs generally deny the allegations incorporated in Paragraph 1 of the Counterclaims.

2. Plaintiffs deny the allegations set forth in Paragraph 2 of the Counterclaims, except admit that defendant Voynow, Bayard, Whyte & Company appears to allege counterclaims for itself.

3. Plaintiffs deny the allegations set forth in Paragraph 3, except admit that the Counterclaims purport to assert certain of the counterclaims against certain of the Plaintiffs in the affirmative case.

4. Plaintiffs admit the allegations set forth in Paragraph 4 of the Counterclaims, but aver that the scope of engagement was broader than alleged therein.

5. Plaintiffs deny the allegations set forth in Paragraph 5 of the Counterclaims.

6. Plaintiffs deny the allegations set forth in Paragraph 6 of the Counterclaims.

7. Plaintiffs deny the allegations set forth in Paragraph 7 of the Counterclaims.

8. Plaintiffs deny the allegations set forth in Paragraph 8 of the Counterclaims.

9. Plaintiffs deny the allegations set forth in Paragraph 9 of the Counterclaims.

10. Plaintiffs deny the allegations set forth in Paragraph 10 of the Counterclaims

11. Plaintiffs deny the allegations set forth in Paragraph 11 of the Counterclaims, except deny information or belief sufficient to admit or deny whether Voynow “accrued fees” for any services allegedly performed.

12. Plaintiffs deny the allegations set forth in Paragraph 12 of the Counterclaims, except admit that certain payments were withheld by certain Plaintiffs due to Defendants' negligence.

13. Plaintiffs deny the allegations set forth in Paragraph 13 of the Counterclaims.

14. Plaintiffs deny the allegations set forth in Paragraph 14 of the Counterclaims, except admit that certain Plaintiffs asked certain Defendants to assist in connection the training of "Jackie" at certain times and that certain Defendants failed to do so in a competent or careful manner.

15. Plaintiffs deny the allegations set forth in Paragraph 15 of the Counterclaims.

16. Plaintiffs deny the allegations set forth in Paragraph 16 of the Counterclaims, except deny information or belief sufficient to admit or deny whether Voynow "accrued fees" in connection with any such services.

17. Plaintiffs deny the allegations set forth in Paragraph 17 of the Counterclaims, except admit that certain payments were withheld by certain Plaintiffs due to Defendants' negligence.

18. Plaintiffs deny the allegations set forth in Paragraph 18 of the Counterclaims.

As to Count I for Breach of Contract – Star Subaru

19. Plaintiffs deny the allegations incorporated in Paragraph 19 of the Counterclaims as though the same were more fully set forth herein.

20. Plaintiffs deny the allegations set forth in Paragraphs 20 to 24 of the Counterclaims.

As to Count II for Breach of Contract – Star Chrysler Plymouth Jeep

21. Plaintiffs deny the allegations incorporated in Paragraph 25 of the Counterclaims as though the same were more fully set forth herein.

22. Plaintiffs deny the allegations set forth in Paragraphs 26 to 29 of the Counterclaims.

As to Count III for Breach of Contract – Star Chrysler Plymouth Jeep

23. Plaintiffs deny the allegations incorporated in Paragraph 30 of the Counterclaims as though the same were more fully set forth herein.

24. Plaintiffs deny the allegations set forth in Paragraphs 31 to 35 of the Counterclaims.

As to Count IV for Breach of Contract – Star Nissan

25. Plaintiffs deny the allegations incorporated in Paragraph 36 of the Counterclaims as though the same were more fully set forth herein.

26. Plaintiffs deny the allegations set forth in Paragraphs 37 to 41 of the Counterclaims.

As to Count V for Breach of Contract – Star Nissan

27. Plaintiffs deny the allegations incorporated in Paragraph 42 of the Counterclaims as though the same were more fully set forth herein.

28. Plaintiffs deny the allegations set forth in Paragraphs 43 to 47 of the Counterclaims.

As to Count VI for Breach of Contract – Star Toyota

29. Plaintiffs deny the allegations incorporated in Paragraph 48 of the Counterclaims as though the same were more fully set forth herein.

30. Plaintiffs deny the allegations set forth in Paragraphs 49 to 53 of the Counterclaims.

As to Count VII for Breach of Contract – Star Toyota

31. Plaintiffs deny the allegations incorporated in Paragraph 54 of the Counterclaims as though the same were more fully set forth herein.

32. Plaintiffs deny the allegations set forth in Paragraphs 55 to 59 of the Counterclaims.

As to Count VIII for Breach of Contract – Star Hyundai

33. Plaintiffs deny the allegations incorporated in Paragraph 60 of the Counterclaims as though the same were more fully set forth herein.

34. Plaintiffs deny the allegations set forth in Paragraphs 61 to 65 of the Counterclaims.

As to Count IX for Breach of Contract – Star Fiat

35. Plaintiffs deny the allegations incorporated in Paragraph 66 of the Counterclaims as though the same were more fully set forth herein.

36. Plaintiffs deny the allegations set forth in Paragraphs 67 to 71 of the Counterclaims.

Affirmative Defenses

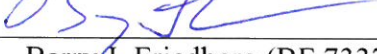
37. The Counterclaims fail to state claims upon which relief may be granted.
38. The Counterclaims are barred, in whole or in part, by the Statute of Frauds.
39. The Counterclaims are barred, in whole or in part, for indefiniteness.
40. The Counterclaims are barred, in whole or in part, by Defendants' unclean hands.
41. The Counterclaims are barred, in whole or in part, by equitable estoppel.
42. The Counterclaims are barred, in whole or in part, by Defendant's failure to mitigate damages.
43. The Counterclaims are barred, in whole or in part, due to unconscionability.
44. If and to the extent any plaintiff is found to have any liability under any of the Counterclaims, Plaintiffs are entitled, in whole or in part, to a set-off.

Prayer For Relief

WHEREFORE, Plaintiffs Star Auto Sales of Bayside, Inc., Star Auto Sales of Queens, LLC, Star Hyundai LLC, Star Nissan, Inc., Metro Chrysler Plymouth Inc., Star Auto Sales of Queens County LLC and Star Auto Sales of Queens Village LLC respectfully pray for judgment against defendants Voynow, Bayard, Whyte and Company, LLP in an amount to be established at trial, but which shall not be less than ten million dollars (\$10,000,000.00), plus interest and attorneys' fees, dismissing the Counterclaims in their entirety and for any such other and further relief as this Court deems just and proper.

Dated: New York, New York
May 13, 2019

TRACHTENBERG RODES & FRIEDBERG LLP

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